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AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1941

No. 1118

ELDON STEELE, Petitioner,

vs.

THE STATE OF NORTH CAROLINA, Respondent

BRIEF OF PETITIONER IN REPLY TO BRIEF OF THE RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI.

ARGUMENT

I.

THE CONSTITUTIONALITY OF THE PROCEDURE FOR DETERMINING THE GUILT OR INNOCENCE OF DEFENDANTS IN COURTS OF JUSTICES OF THE PEACE IN RICHMOND COUNTY IS NOT A MOOT QUESTION BECAUSE OF PETITIONER'S PLEA OF GUILTY.

To say that petitioner's plea of guilty makes the constitutionality of the procedure under which he is tried a moot question presupposes that the statutes [set out in full in the

Appendix of this brief] giving the Justices of the Peace of Richmond County a "direct, substantial pecuniary interest"[1] in convicting defendants do not deprive Justices of the Peace of jurisdiction to try criminal cases, for even the Supreme Court of North Carolina holds that jurisdiction can not be conferred by consent[2] and that lack of jurisdiction can not be waived.[3] It also assumes that a plea of guilty is a waiver of the constitutional right to be tried and sentenced by a fair and impartial judge. Yet the Tenth Circuit Court of Appeals in the case of *McCleary v. Hudspeth*, 124 F (2d) 445 (Dec. 24, 1941) held that a plea of guilty is not a waiver of the right to counsel and that such plea and the judgment and sentence thereon are void and may be attacked by writ of *habeas corpus*.

Though ordinarily a plea of guilty is a confession of guilt, that this is not always true is recognized by *Walker v. Johnson*, 312 U. S. 275, *Smith v. O'Grady*, 312 U. S. 329, *McCleary v. Hudspeth, supra*, and *State v. Branner*, 149 N. C. 559, 561, 63 S. E. 169. In the Branner Case, it was said that a plea of guilty may be changed to a plea of not guilty in the discretion of the court, and this is still law in North Carolina.

As a practical matter, the cheapest thing that a man charged with a crime in a court of a Justice of the Peace in Richmond County may do is to plead guilty. By pleading guilty, Eldon Steele saved having a witness fee charged against him in the instant case. (R. 8.) Every man who knows that a magistrate must convict so many head a month or go bankrupt"[4] will be tempted to plead guilty, whether guilty or not, rather than to have to pay the additional costs entailed by a trial or be put to the "delay, an-

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[1] *Tumey v. Ohio*, 273 U. S. 210, 47 S. Ct. 437, 67 L. ed. 969.

[2] *MacRae & Co. v. Shaw*, 220 N. C. 516, 17 S. E. (2d) 664.

[3] *Miller v. Roberts*, 212 N. C. 126, 193 S. E. 286.

[4] Note on *In Re Steele*, 220 N. C. 685, 18 S. E. (2d) 132, (the instant case) in 20 N. C. L. Rev. 304, 311.

noyance and expense of an appeal."[5] This fact alone should be enough to deprive the Justices of the Peace of Richmond County of jurisdiction to accept a plea of guilty in a criminal action.

Finally, even if the plea of guilty be considered a confession of guilt, the magistrate must still enter a judgment. But, if the prisoner is unable to pay the costs, the only way in which a magistrate is able to get any pay for his services is to sentence the defendant to jail to be assigned to work on the roads. N. C. Pub.-Loc. Laws of 1933, Chap. 342, Sec. 2 (a). And under the provisions of the North Carolina Code of 1939 (Michie), Sec. 3846 (25), no person may be committed to the roads for a term of less than thirty days. Therefore, to be entitled to collect costs from the county for the trial of a defendant who is unable to pay the costs, the magistrate must give a sentence of at least thirty days. The offense for which Eldon Steele was sentenced carries a punishment of a fine of *not more than* fifty dollars ($50.00), or imprisonment for *not more than* thirty days. N. C. Code of 1939 (Michie), Sec. 4457 (a) and 4458. Thus, in the instant case, the magistrate might have imposed a fine of from one cent (1c) to fifty dollars ($50.00) or imprisonment for from one day to thirty days. Since the petitioner was unable to pay a fine, or even the costs, the magistrate could receive compensation for the trial of petitioner *only* by sentencing him to the *maximum* term of thirty days. Therefore, the magistrate had a "direct, substantial, pecuniary interest"[6] in sentencing petitioner to the maximum term provided by law.

Under the provisions of Sec. 1481 of the N. C. Code of 1939 (Michie), a magistrate in North Carolina may try only cases involving offenses the punishment for which does not exceed a fine of fifty dollars ($50.00) or imprisonment for thirty days. The fact that the magistrate in the

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[5] *Williams v. Brannen*, 116 W. Va. 1, 178 S. E. 67.

[6] *Tumey v. Ohio, supra.*

instant case imposed the longest prison term in his power —one just long enough to insure the collection of his fee from the County—and suspended it on condition that the defendant pay the costs without any fine, is rather conclusive proof that he imposed the maximum sentence only to insure the collection of his fee.

CONCLUSION

The magistrate in the instant case had a "direct, substantial, pecuniary interest"[6] not only in finding petitioner guilty, or having him plead guilty, but also in imposing upon him the maximum sentence allowed by law. Surely such a procedure deprived petitioner of his liberty without due process of law.

Respectfully submitted,

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ADDENDUM

On page 15 of their brief counsel for respondent say that "it did not appear that there was any right to a trial *de novo* on appeal from the Quarterly Court" in the case of *Ex parte Baer*, 20 Fed. 2nd 912 (Ky.), cited by petitioner in his original brief, "nor did it appear that there was a right to a trial *de novo* on appeal from the judgment complained of in *Ex parte Hatem*," 38 Fed. 2nd 226 (Ohio). At least as to Kentucky, however, counsel for respondent are incorrect in this assumption for the statutes of Kentucky (Section 336 of the Criminal Code) provide, as to appeals from Quarterly Courts to Circuit Courts, that

[6] *Tumey v. Ohio, supra.*